

REMARKS

The Office Action of December 12, 2005, has been carefully considered.

Claims 19 and 29 have now been amended to incorporate the recitations of Claim 40, specifying that the gel phase comprises a polymer from a preferred group. Claim 40 has been canceled.

In view of the amendment of the claims, the rejection to be primarily discussed is the rejection of Claim 40 under 35 USC 103(a) over Briggs et al in view of Nadaud et al. The Office action alleges that "[o]ne having ordinary skill in the art would have a reasonable expectation of obtaining the same gelling effect as set forth in the Briggs et al reference because these gelling agents are used interchangeably for the same art-recognized purpose as suggested by Nadaud et al. Selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicant's specific selection."

In order to rebut this allegation and show unexpected results, Applicants submit herewith a declaration of inventor Chantal Amalric Under 37 CFR 1.132, comparing compositions prepared according to the invention with the claimed polymers, with compositions prepared utilizing polymers disclosed by Briggs et al. The declaration reports on two series of experiments, with the first series directed to the claimed homopolymers and copolymers of acrylic acid, and acrylic acid derivatives, acrylamide, acrylamide derivatives and acrylamidomethanepropanesulfonic acid. The results of this series experiments show that water-in-oil emulsions can be obtained at very low oily phase levels for polymers throughout the preferred group, including the case where the polymer is polyacrylic acid homopolymer.

A second series of experiments was carried out with the thickening polymers of the Briggs et al reference. Utilizing these polymers, Applicant found that with low amounts of oil, an inversion occurred and an oil-in-water emulsion was formed. In fact, none of the conventional polymers listed by Briggs et al could produce a stable oil-in-water emulsion. At very low amounts of the oil phase, the polymers according to the invention give rise to a water-in-oil emulsion, but other thickening polymers do not give rise to stable water-in-oil emulsions. Although the polymers of Briggs et al are in general able to thicken aqueous phases, they cannot stabilize water-in-oil emulsions of the type desired according to the invention.

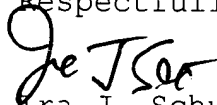
This effect is not taught by or predictable from the Briggs et al reference. Although Nadaud et al does mention polymers within the group preferred, Nadaud et al does not teach or suggest this effect. On the contrary, Nadaud et al is specifically directed to water/oil/water triple emulsions with a *gelled continuous external aqueous phase*. According to the invention, it is the oil phase that is the external phase, and in the cosmetics field, this result is quite distinct in terms of the effect on the skin of the wearer as well as in terms of water resistance and stability towards oxidation in air. A document teaching the use of gelling agents for emulsions with an aqueous external phase does not suggest their use to a cosmetic specialist for emulsions with an oily external phase, and the Nadaud et al reference does not teach or suggest the specific effects which have been observed at low oil levels in an oily external phase emulsion.

Having clearly shown an unexpected effect from the use of the claimed polymers, Applicants submit that the invention as claimed is clearly patentable over the references of record

and withdrawal of the rejections of record is requested.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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